

1 **THE GIMINO LAW OFFICE, APC**  
Peter J Gimino III, Esq. (SBN 198926)  
2 pgimino@giminolaw.com  
1 Park Plaza, Suite 600  
3 Irvine, CA 92614  
Telephone: (949) 225-4446  
4 Facsimile: (949) 225-4447

5 **WOODROW & PELUSO, LLC**  
Steven L. Woodrow\*  
6 swoodrow@woodrowpeluso.com  
Patrick H. Peluso\*  
7 ppeluso@woodrowpeluso.com  
3900 E. Mexico Avenue, Suite 300  
8 Denver, Colorado 80210  
Telephone: (720) 213-0675  
9 Facsimile: (303) 927-0809  
10 \*pro hac vice application to be filed

11 Attorneys for Plaintiff, Eva Hulsey, and the Putative Classes

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
14

15 **EVA HULSEY**, individually and on  
16 behalf of all others similarly situated,

17 *Plaintiff,*

18 v.  
19

20 **PEDDLE, LLC**, a Texas limited  
21 liability company,

22 *Defendant.*  
23  
24  
25  
26  
27  
28

Case No.: 2:17-cv-3843

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

## **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Eva Hulsey (“Hulsey” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial (“Complaint”) against Defendant Peddle, LLC (“Peddle” or “Defendant”) to stop Defendant’s practice of sending unsolicited text messages to cellular telephones without the recipient’s prior express written consent and to obtain redress, including injunctive relief, for all persons injured by Defendant’s conduct. Plaintiff, for her Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

### **NATURE OF THE ACTION**

1. Defendant Peddle, LLC, is a company that purchases automobiles that are no longer properly functioning. In other words, Defendant purchases “junk cars.”<sup>1</sup>

2. Unfortunately for consumers, Defendant casts its marketing net too wide. That is, in an attempt to promote its business and generate leads for its services, Defendant conducted (and continues to conduct) a wide-scale telemarketing campaign that features the sending of repeated, unsolicited text messages to consumers’ cellular telephones—without consent, all in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”).

---

<sup>1</sup> <https://www.peddle.com/about-us>

1       **A. Bulk SMS Marketing**

2           3.       In recent years, marketers who have felt stymied by federal laws  
3 limiting solicitation by telephone, fax machine, and e-mail have increasingly looked  
4 to alternative technologies through which to send bulk messages cheaply.  
5

6           4.       Bulk text messaging, or SMS marketing, has emerged as a new and  
7 direct method of communicating and soliciting consumer business. The term “Short  
8 Message Service” or “SMS” is a messaging system that allows cellular telephone  
9 subscribers to use their cellular telephones to send and receive short text messages,  
10 usually limited to 160 characters. An SMS message is a text message call directed  
11 to a wireless device through the use of the telephone number assigned to the device.  
12  
13

14           5.       When an SMS message call is successfully made, the recipient’s cell  
15 phone rings, alerting him or her that a call is being received. As cellular telephones  
16 are inherently mobile and are frequently carried on their owner’s person, calls to  
17 cellular telephones, including SMS messages, may be received by the called party  
18 virtually anywhere worldwide and instantaneously.  
19  
20

21       **B. Defendant Transmits Text Messages to Consumers Who Do Not Want**  
22       **Them**

23           6.       On information and belief, Defendant sends text messages to  
24 consumer’s cellular telephones in an attempt to solicit their business.  
25  
26  
27  
28

1           7.     In sending these text messages, Defendant took no steps to acquire the  
2 prior express consent of Plaintiff or the Class Members who received the  
3 unsolicited text messages.

4           8.     Defendant made, or had made on its behalf, the same (or substantially  
5 the same) text message calls *en masse* to thousands of cellular telephone numbers  
6 throughout the United States.

7           9.     In sending the text messages at issue in this Complaint, Defendant  
8 utilized an automatic telephone dialing system (“ATDS”). Specifically, the  
9 hardware and software used by Defendant (or its agent) has the capacity to store,  
10 produce, and dial random or sequential numbers, and/or receive and store lists of  
11 telephone numbers, and to dial such numbers, *en masse*, in an automated fashion  
12 without human intervention. Defendant’s ATDS includes features substantially  
13 similar to a predictive dialer, inasmuch as it is capable of making numerous text  
14 message calls simultaneously (all without human intervention).

15           10.    Defendant was and is aware that these above described text messages  
16 were and are being made without the prior express written consent of the text  
17 message recipients.

18           11.    By sending the text messages at issue in this Complaint, Defendant  
19 caused Plaintiff and the other members of the Classes actual harm and cognizable  
20 legal injury. This includes the aggravation and nuisance and invasions of privacy  
21 that result from the sending and receipt of such text messages, a loss of value

1 realized for the monies consumers paid to their carriers for the receipt of such text  
2 messages, and a loss of the use and enjoyment of their phones, including wear and  
3 tear to the related data, memory, software, hardware, and battery components,  
4 among other harms.

6 12. In response to Defendant's unlawful conduct, Plaintiff filed this action  
7 seeking an injunction requiring Defendant to cease all unsolicited text messaging  
8 activities and an award of statutory damages to the members of the Classes under  
9 the TCPA, together with costs and reasonable attorneys' fees.

## 11 PARTIES

12  
13 13. Plaintiff Eva Hulsey is a natural person and resident of Harbor City,  
14 California.

15 14. Defendant Peddle, LLC is a limited liability company organized and  
16 existing under the laws of the State of Texas with its principal place of business  
17 located at 111 W. 6<sup>th</sup> Street, Suite 300, Austin, Texas 78701.<sup>2</sup> Defendant conducts  
18 business throughout this District, the State of California, and the United States.

## 21 JURISDICTION AND VENUE

22 15. This Court has jurisdiction over the subject matter of this action under  
23 28 U.S.C. § 1331, as the action arises under the TCPA, which is a federal statute.  
24 This Court has personal jurisdiction over Defendant because Defendant conducts a  
25 significant amount of business in this District, solicits consumers in this District,  
26

27  
28 <sup>2</sup> <https://mycpa.cpa.state.tx.us/coa/coaSearch.do>

1 sent and continues to send unsolicited text messages in this District, and because the  
2 wrongful conduct giving rise to this case occurred in, was directed to, and/or  
3 emanated from this District.

4  
5 16. Venue is proper in this District under 28 U.S.C. § 1391(b) because  
6 Defendant conducts a significant amount of business within this District and  
7 markets to this District, and because the wrongful conduct giving rise to this case  
8 occurred in, was directed to, and/or emanated from this District. Venue is  
9 additionally proper because Plaintiff resides in this District.

#### 11 COMMON FACTUAL ALLEGATIONS

12  
13 17. Defendant is a company that purchases junk cars from consumers.  
14 Consumers have the ability to contact Defendant online to obtain a quote regarding  
15 the price of getting their junk cars removed by Defendant.

16  
17 18. In recent years, online companies such as Defendant have turned to  
18 unsolicited telemarketing as a way to increase their customer base. Widespread  
19 telemarketing is a primary method by which Defendant recruits new customers.

20  
21 19. Text messages, like the ones sent in the instant action, are considered  
22 calls under the TCPA. *See Rules and Regulations Implementing the Telephone*  
23 *Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18  
24 FCC Rcd. 14014, 14115, ¶ 165 (July 3, 2003); *see also Satterfield v. Simon &*  
25 *Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009) (noting that text messaging is a  
26  
27  
28

1 form of communication used primarily between telephones and is therefore  
2 consistent with the definition of a “call”).

3         20. As explained by the Federal Communications Commission (“FCC”) in  
4 its 2012 order, the TCPA requires “*prior express written consent* for all autodialed  
5 or prerecorded telemarketing calls to wireless numbers and residential lines.” *In the*  
6 *Matter of Rules and Regulations Implementing the Telephone Consumer Protection*  
7 *Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).  
8

9  
10         21. Yet, in violation of this rule, Defendant fails to obtain any prior  
11 express written consent to send these text messages to cellular telephone numbers.  
12

13         22. At all times material to this Complaint, Defendant was and is fully  
14 aware that unsolicited telemarketing text messages are being made to consumers’  
15 cellular telephones through its own efforts and its agents.  
16

17         23. Defendant knowingly made (and continues to make) unsolicited  
18 telemarketing calls without the prior express written consent of the call recipients.  
19 In so doing, Defendant not only invaded the personal privacy of Plaintiff and  
20 members of the putative Classes, but also intentionally and repeatedly violated the  
21 TCPA.  
22

23                     **FACTS SPECIFIC TO PLAINTIFF EVA HULSEY**  
24

25         24. On February 3, 2016, Plaintiff registered her cellular telephone number  
26 on the National Do Not Call Registry to avoid receiving unsolicited telemarketing  
27 calls on her cellular telephone.  
28

1           25. On January 22, 2017, at 7:07 p.m., and more than 31 days after she  
2 registered her number on the National Do Not Call Registry, Plaintiff received the  
3 first unsolicited text message from Peddle.<sup>3</sup> The message read:

4  
5                       Good evening! I'm the Peddle bot that will help you get an offer  
6 on your '94 Corolla. 1. We can pick-up your car and pay up to  
7 \$60. 2. You can also list it for sale and we will try to get you up  
8 to \$550. To review your offers or learn more visit  
9 <http://goo.gl/iLYp2H>.

10           26. One minute later, at 7:08 p.m., Plaintiff responded for the purpose of  
11 ascertaining Peddle's identity and getting the text messages to stop:

12                       Who r u where did u get my c

13           27. On January 23, 2017 at 10:40 a.m. Plaintiff received another text  
14 message from Peddle. The message read:

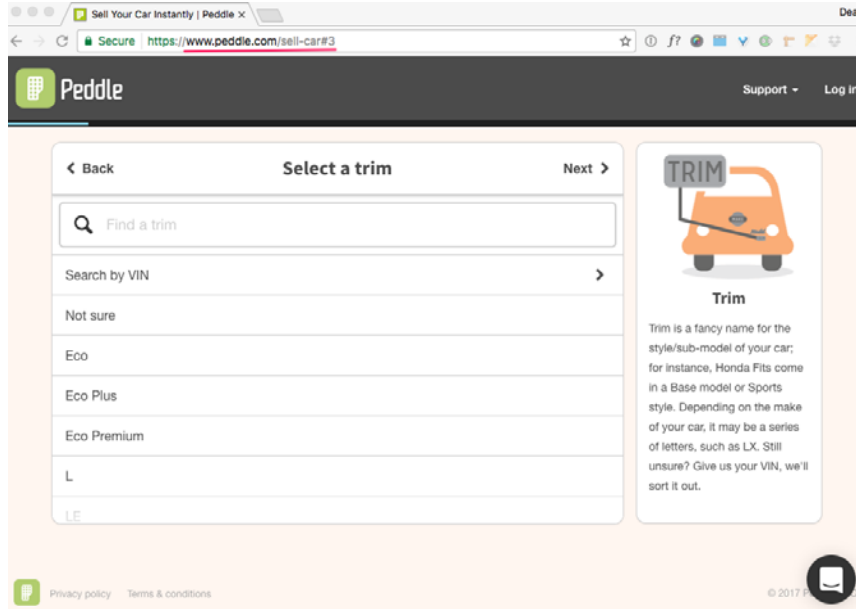
15                       Hi! I am a bot from Peddle that will help you get an offer on  
16 your car. Let's get started! What is the year of your car? For  
17 instance, 2001.

18           28. The link in Peddle's first text message to Plaintiff,  
19 <http://goo.gl/iLYp2H>, directs the consumer to <https://www.peddle.com/sell-car#3>.  
20

21           29. The following is a reproduced screenshot of  
22 <https://www.peddle.com/sell-car#3>:  
23  
24  
25  
26

27 <sup>3</sup> Upon information and good-faith belief, Peddle contends it obtained Plaintiff's contact  
28 information from <http://junkcarzone.com>. Said website contains no TCPA consent language.





30. Plaintiff has never provided her prior express written consent to Defendant to send text messages to her.

31. By sending unauthorized text message calls as alleged herein, Defendant has caused consumers actual harm in the form of annoyance, nuisance, and invasion of privacy. In addition, the calls disturbed Plaintiff's use and enjoyment of her phone, in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on Plaintiff's phone. In the present case, a consumer could be subjected to many unsolicited text messages as the Defendant ignores the requirement of prior express written consent.

32. In order to redress these injuries, Plaintiff, on behalf of herself and the Classes of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited voice and text calls to cellular telephones.

1           33. On behalf of the Classes, Plaintiff seeks an injunction requiring  
2 Defendant to cease all wireless telemarketing activities and an award of statutory  
3 damages to the class members, together with costs and reasonable attorneys' fees.  
4

5                           **CLASS ALLEGATIONS**

6           34. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure  
7 23(b)(2) and Rule 23(b)(3) on behalf of herself and all others similarly situated and  
8 seeks certification of the following two Classes:  
9

10                   **Text Message No Consent Class:** All persons in the United  
11 States from four years prior to the filing of the instant action  
12 who (1) Defendant (or a third person acting on behalf of  
13 Defendant) sent text messages, (2) to the person's cellular  
14 telephone number, and (3) for whom Defendant claims it  
15 obtained prior express written consent in the same manner as  
16 Defendant claims it supposedly obtained prior express written  
17 consent to send automated text messages to the Plaintiff.

18                   **DNC No Consent Class:** All persons in the United States who  
19 (1) received more than one text message on his/her cellular  
20 telephone; (2) within any 12-month period (3) where the cellular  
21 telephone number had been listed on the National Do Not Call  
22 Registry for at least thirty days; (4) for the purpose of selling  
23 Defendant's products and services; and (5) for whom Defendant  
24 claims it obtained prior express consent in the same manner as  
25 Defendant claims it obtained prior express consent to send  
26 automated text messages to the Plaintiff.

27           35. The following individuals are excluded from the Classes: (1) any  
28 Judge or Magistrate presiding over this action and members of their families; (2)  
Defendant, its subsidiaries, parents, successors, predecessors, and any entity in  
which Defendant or its parents have a controlling interest and its current or former

1 employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who  
2 properly execute and file a timely request for exclusion from the Classes; (5) the  
3 legal representatives, successors or assigns of any such excluded persons; and (6)  
4 persons whose claims against Defendant have been fully and finally adjudicated  
5 and/or released. Plaintiff anticipates the need to amend the class definitions  
6 following appropriate discovery.  
7

8  
9 36. **Numerosity:** The exact sizes of the Classes are unknown and not  
10 available to Plaintiff at this time, but it is clear that individual joinder is  
11 impracticable. On information and belief, Defendant sent autodialed text messages  
12 to thousands of consumers who fall into the definition of the Classes. Members of  
13 the Classes can be easily identified through Defendant's records.  
14

15 37. **Commonality and Predominance:** There are many questions of law  
16 and fact common to the claims of Plaintiff and the Classes, and those questions  
17 predominate over any questions that may affect individual members of the Classes.  
18 Common questions for the Classes include, but are not necessarily limited to the  
19 following:  
20  
21

- 22 (a) whether Defendant's conduct constitutes a violation of the TCPA;  
23  
24 (b) whether Defendant utilized an automatic telephone dialing system  
25 to send text messages to members of the Classes;  
26  
27 (c) whether members of the Classes are entitled to treble damages  
28 based on the willfulness of Defendant's conduct;

1 (d) whether Defendant obtained prior express written consent to  
2 contact any class members; and

3 (e) whether Defendants sent unsolicited text messages to consumers  
4 who were registered on the Do Not Call registry.

5 38. **Adequate Representation:** Plaintiff will fairly and adequately  
6 represent and protect the interests of the Classes, and has retained counsel  
7 competent and experienced in class actions. Plaintiff has no interests antagonistic to  
8 those of the Classes, and Defendant has no defenses unique to Plaintiff. Plaintiff  
9 and her counsel are committed to vigorously prosecuting this action on behalf of the  
10 members of the Classes, and have the financial resources to do so. Neither Plaintiff  
11 nor her counsel has any interest adverse to the Classes.  
12

13  
14 39. **Appropriateness:** This class action is also appropriate for certification  
15 because Defendant has acted or refused to act on grounds generally applicable to  
16 the Classes and as a whole, thereby requiring the Court's imposition of uniform  
17 relief to ensure compatible standards of conduct toward the members of the Classes  
18 and making final class-wide injunctive relief appropriate. Defendant's business  
19 practices apply to and affect the members of the Classes uniformly, and Plaintiff's  
20 challenge of those practices hinges on Defendant's conduct with respect to the  
21 Classes as a whole, not on facts or law applicable only to Plaintiff. Additionally, the  
22 damages suffered by individual members of the Classes will likely be small relative  
23 to the burden and expense of individual prosecution of the complex litigation  
24 necessitated by Defendant's actions. Thus, it would be virtually impossible for the  
25  
26  
27  
28

1 members of the Classes to obtain effective relief from Defendant's misconduct on  
2 an individual basis. A class action provides the benefits of single adjudication,  
3 economies of scale, and comprehensive supervision by a single court. Economies of  
4 time, effort, and expense will be fostered and uniformity of decisions will be  
5 ensured.  
6

7  
8 **FIRST CAUSE OF ACTION**  
9 **Telephone Consumer Protection Act**  
10 **(Violation of 47 U.S.C. § 227)**  
11 **(On Behalf of Plaintiff and the Text Message No Consent Class)**

12 40. Plaintiff repeats and realleges the above paragraphs of this Complaint  
13 and incorporates them herein by reference.

14 41. Defendant sent autodialed text messages to cellular telephone numbers  
15 belonging to Plaintiff and other members of the Text Message No Consent Class  
16 without first obtaining prior express written consent to receive such autodialed text  
17 messages.  
18

19 42. Defendant sent the autodialed text messages using equipment that had  
20 the capacity to store or produce telephone numbers using a random or sequential  
21 number generator, to receive and store lists of phone numbers, and to dial such  
22 numbers, *en masse*, without human intervention. The telephone dialing equipment  
23 utilized by Defendant, also known as a predictive dialer, dialed numbers from a list,  
24 or dialed numbers from a database of telephone numbers, in an automatic and  
25  
26  
27  
28

1 systematic manner. Defendant's autodialer disseminated information *en masse* to  
2 Plaintiff and other consumers.

3 43. By sending the unsolicited text messages to Plaintiff and the cellular  
4 telephones of members of the Text Message No Consent Class without their prior  
5 express written consent, and by utilizing an automatic telephone dialing system to  
6 make those calls, Defendants violated 47 U.S.C. § 227(b)(1)(A)(iii).  
7

8 44. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a  
9 result of Defendant's conduct, Plaintiff and the other members of the Text Message  
10 No Consent Class are each entitled to, under 47 U.S.C. § 227(b)(3)(B), a minimum  
11 of \$500.00 in damages for each violation of such act.  
12

13 45. In the event that the Court determines that Defendant's conduct was  
14 willful and knowing, it may, under 47 U.S.C. § 227(b)(3)(C), treble the amount of  
15 statutory damages recoverable by Plaintiff and the other members of the Text  
16 Message No Consent Class.  
17

18  
19 **SECOND CAUSE OF ACTION**  
20 **Telephone Consumer Protection Act**  
21 **(Violations of 47 U.S.C. § 227)**  
22 **(On Behalf of Plaintiff and the DNC No Consent Class)**

23 46. Plaintiff repeats and realleges the above paragraphs of this Complaint  
24 and incorporates them herein by reference.

25 47. 47 U.S.C. § 227(c) provides that any "person who has received more  
26 than one telephone call within any 12-month period by or on behalf of the same  
27

1 entity in violation of the regulations prescribed under this subsection may” bring a  
2 private action based on a violation of said regulations, which were promulgated to  
3 protect telephone subscribers’ privacy rights to avoid receiving telephone  
4 solicitations to which they object.  
5

6 48. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c),  
7 provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a]  
8 residential telephone subscriber who has registered his or her telephone number on  
9 the national do-not-call registry of persons who do not wish to receive telephone  
10 solicitations that is maintained by the federal government.”  
11  
12

13 49. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are  
14 applicable to any person or entity making telephone solicitations or telemarketing  
15 calls to wireless telephone numbers to the extent described in the FCC’s July 3,  
16 2003 Report and Order, which in turn, provides as follows:  
17

18 The Commission’s rules provide that companies making  
19 telephone solicitations to residential telephone subscribers  
20 must comply with time of day restrictions and must  
21 institute procedures for maintaining do-not-call lists. For  
22 the reasons described above, we conclude that these rules  
23 apply to calls made to wireless telephone numbers. We  
24 believe that wireless subscribers should be afforded the  
25 same protections as wireline subscribers.<sup>4</sup>  
26

---

27 <sup>4</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG  
28 Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at  
[https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)

1           50.    47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity  
2 shall initiate any call for telemarketing purposes to a residential telephone  
3 subscriber unless such person or entity has instituted procedures for maintaining a  
4 list of persons who request not to receive telemarketing calls made by or on behalf  
5 of that person or entity. The procedures instituted must meet the following  
6 minimum standards:  
7

8  
9           (1) Written policy. Persons or entities making calls for  
10 telemarketing purposes must have a written policy, available  
11 upon demand, for maintaining a do-not-call list.

12           (2) Training of personnel engaged in telemarketing. Personnel  
13 engaged in any aspect of telemarketing must be informed and  
14 trained in the existence and use of the do-not-call list.

15           (3) Recording, disclosure of do-not-call requests. If a person or  
16 entity making a call for telemarketing purposes (or on whose  
17 behalf such a call is made) receives a request from a residential  
18 telephone subscriber not to receive calls from that person or  
19 entity, the person or entity must record the request and place the  
20 subscriber’s name, if provided, and telephone number on the do-  
21 not-call list at the time the request is made. Persons or entities  
22 making calls for telemarketing purposes (or on whose behalf  
23 such calls are made) must honor a residential subscriber’s do-  
24 not-call request within a reasonable time from the date such  
25 request is made. This period may not exceed thirty days from the  
26 date of such request . . . .

27           (4) Identification of sellers and telemarketers. A person or entity  
28 making a call for telemarketing purposes must provide the called  
party with the name of the individual caller, the name of the  
person or entity on whose behalf the call is being made, and a  
telephone number or address at which the person or entity may  
be contacted. The telephone number provided may not be a 900  
number or any other number for which charges exceed local or  
long distance transmission charges.



1 (5) Affiliated persons or entities. In the absence of a specific  
2 request by the subscriber to the contrary, a residential  
3 subscriber's do-not-call request shall apply to the particular  
4 business entity making the call (or on whose behalf a call is  
5 made), and will not apply to affiliated entities unless the  
6 consumer reasonably would expect them to be included given  
7 the identification of the caller and the product being advertised.

8 (6) Maintenance of do-not-call lists. A person or entity making  
9 calls for telemarketing purposes must maintain a record of a  
10 consumer's request not to receive further telemarketing calls. A  
11 do-not-call request must be honored for 5 years from the time  
12 the request is made.

13 51. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to  
14 be initiated, telephone solicitations to wireless telephone subscribers such as  
15 Plaintiff and the DNC No Consent Class members who registered their respective  
16 telephone numbers on the National Do Not Call Registry, a listing of persons who  
17 do not wish to receive telephone solicitations that is maintained by the federal  
18 government. These consumers requested to not receive calls from Defendant, as set  
19 forth in 47 C.F.R. § 64.1200(d)(3).

20 52. Defendant also violated 47 C.F.R. § 64.1200(d) by failing to have a  
21 written policy regarding do not call requests and by failing to inform or train its  
22 personnel regarding any do not call list.

23 53. Defendant made more than one unsolicited telephone call to Plaintiff  
24 and other members of the DNC No Consent Class within a 12-month period  
25 without their prior express consent to receive such calls. Plaintiff and other  
26  
27  
28

1 members of the DNC No Consent Class never provided any form of consent to  
2 receive telephone calls from Defendant, and/or Defendants do not have a current  
3 record of consent to place telemarketing calls to them.

4  
5 54. Defendants violated 47 C.F.R. § 64.1200(d) by initiating calls for  
6 telemarketing purposes to residential and wireless telephone subscribers, such as  
7 Plaintiff and the DNC No Consent Class, without instituting procedures that comply  
8 with the regulatory minimum standards for maintaining a list of persons who  
9 request not to receive telemarketing calls from them.  
10

11 55. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the  
12 DNC No Consent Class received more than one telephone call in a 12-month period  
13 made by or on behalf of Defendants in violation of 47 C.F.R. § 64.1200, as  
14 described above. As a result of Defendant's conduct as alleged herein, Plaintiff and  
15 the DNC No Consent Class suffered actual damages and, under section 47 U.S.C. §  
16 227(c), are each entitled, *inter alia*, to receive up to \$500 in damages for such  
17 violations of 47 C.F.R. § 64.1200.  
18  
19  
20

21 56. To the extent Defendant's misconduct is determined to be willful and  
22 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of  
23 statutory damages recoverable by Plaintiff and the DNC No Consent Class.  
24  
25  
26  
27  
28

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Eva Hulsey, individually and on behalf of the Classes, prays for the following relief:

1. An order certifying the Classes as defined above, appointing Plaintiff Eva Hulsey as the representative of the Classes, and appointing her counsel as Class Counsel;
2. An award of actual monetary loss from such violations or the sum of five hundred dollars (\$500.00) for each violation, whichever is greater all to be paid into a common fund for the benefit of the Plaintiff and the Class Members;
3. An order declaring that Defendant's actions, as set out above, violate the TCPA;
4. A declaratory judgment that Defendant's telephone calling equipment constitutes an automatic telephone dialing system under the TCPA;
5. An order requiring Defendant to disgorge any ill-gotten funds acquired as a result of its unlawful telephone calling practices;
6. An order requiring Defendant to identify any third-party involved in the autodialed calling as set out above, as well as the terms of any contract or compensation arrangement it has with such third parties;
7. An injunction requiring Defendant to cease all unsolicited autodialed calling activities, and otherwise protecting the interests of the Classes;

1           8.     An injunction prohibiting Defendant from using, or contracting the use  
2 of, an automatic telephone dialing system without obtaining, and maintaining  
3 records of, call recipient's prior express written consent to receive calls made with  
4 such equipment;  
5

6           9.     An injunction prohibiting Defendant from contracting with any third-  
7 party for marketing purposes until they establish and implement policies and  
8 procedures for ensuring the third-party's compliance with the TCPA;  
9

10          10.    An injunction prohibiting Defendant from conducting any future  
11 telemarketing activities until they have established an internal Do Not Call List as  
12 required by the TCPA;  
13

14          11.    An award of reasonable attorneys' fees and costs to be paid out of the  
15 common fund prayed for above; and  
16

17          12.    Such other and further relief that the Court deems reasonable and just.

18         Respectfully Submitted,

19         **EVA HULSEY**, individually and on behalf of Classes of similarly situated  
20 individuals  
21

22                                   THE GIMINO LAW OFFICE, APC

23         Dated: May 22, 2017

24         By:      /s/ Peter J. Gimino, III       
              Peter J. Gimino III

25                                   WOODROW & PELUSO, LLC (*pro hac*  
26                                   *vice admission to be sought*)

27                                   Attorneys for Plaintiff Eva Hulsey and the  
28                                   Putative Classes

**JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

THE GIMINO LAW OFFICE, APC

Dated: May 22, 2017

By: /s/ Peter J. Gimino, III  
Peter J. Gimino III

WOODROW & PELUSO, LLC (*pro hac*  
*vice admission to be sought*)

Attorneys for Plaintiff Eva Hulseley and the  
Putative Classes